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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report submitted by Mr. Theo van Boven, Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Assembly resolution 57/200 of 18 December 2002.

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Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Assembly resolution 57/200 of 18 December 2002

Summary

In the present report, submitted pursuant to General Assembly resolution 57/200 and Commission on Human Rights resolution 2003/32, the Special Rapporteur refers to his main report to the fifty-ninth session of the Commission on Human Rights and its two addenda and to the activities he has been carrying out since the submission of the latter. He further addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

As a follow-up to the report submitted to the previous session of the General Assembly, the Special Rapporteur first draws the attention to a number of recent conclusions, recommendations and other findings issued by international and regional human rights monitoring bodies on the issue of the prohibition of torture and other forms of ill-treatment in the context of anti-terrorism measures. In a second part, he introduces his preliminary study on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment. The study was presented to the fifty-ninth session of the Commission on Human Rights. Thirdly, as a follow-up to the views on the issue of reparation for torture submitted by his predecessor in his report to the fifty-fifth session of the General Assembly, the Special Rapporteur gives stroke of a project of the non-governmental organization Redress Trust. This project examines domestic law and practice on the right to reparation for torture victims with a view to establishing to what extent torture victims have been able to exercise their right to reparation. Finally, the Special Rapporteur examines the question of the prevention of torture and other forms of ill-treatment in psychiatric institutions in the light of existing international norms, principles and guidelines. In particular, the Special Rapporteur pays attention to the legal safeguards related to the internment procedure, the treatment to be received by persons held in such institutions, the use of seclusion and other forms of restraint and the monitoring of psychiatric institutions.

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I. Introduction

1. The present report is the fifth report submitted to the General Assembly by the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, pursuant to General Assembly resolution 57/200 (para. 31) and Commission resolution 2003/32 (para. 34). It is the second report to be submitted by the present mandate-holder, Theo van Boven. As in the past, this report includes issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur would like to draw the attention of the General Assembly to his report to the fifty-ninth session of the Commission on Human Rights (E/CN.4/2003/68), in which he described his methods of work and recalled his general recommendations. Once again, he would strongly encourage States and other interested organizations to reflect upon these recommendations as useful tools to fight against torture and other forms of ill-treatment. The Special Rapporteur would like to refer to the activities he has been carrying out since the submission of the above-mentioned report.

3. With respect to fact-finding missions, the Special Rapporteur undertook, at the invitation of the Government of the Republic of Uzbekistan, a visit to that country from 24 November to 6 December 2002 during which he met various high officials and representatives of civil society organizations, as well as alleged torture victims and their relatives, and visited facilities. The Special Rapporteur appreciated that the Government enabled him to carry out this important mission (E/CN.4/2003/68/Add.2). He regarded his visit as a clear indication of increased cooperation between the Government and the United Nations in the field of human rights. The Special Rapporteur believes, on the basis of the numerous testimonies he received during the mission, that torture or similar ill-treatment is systematic. Accordingly, he has recommended that a number of measures be adopted with a view to putting an end to torture and ill-treatment in Uzbekistan.

4. The Special Rapporteur continued to hold consultations with representatives from Bolivia, China, Georgia, Nepal and Spain with a view to exploring the possibility of undertaking fact-finding visits to these countries, which have extended an invitation to the Special Rapporteur. He regrets that his earlier requests to visit Algeria, Egypt, India, Indonesia, Israel, the Russian Federation with respect to the Republic of Chechnya, and Tunisia have not yet led to results. By letter dated 6 June 2003, in accordance with resolution 2003/11 (para. 5) of the Commission on Human Rights, he inquired whether the Government of Turkmenistan would agree to a visit.

5. The Special Rapporteur would like to inform the General Assembly that, as reflected in the first addendum to his last report to the Commission on Human Rights,[1] from 1 December 2001 to 15 December 2002, he sent to 65 countries 109 letters containing allegations of individual cases of torture or general references to the phenomenon of torture. The Special Rapporteur also sent 68 letters reminding Governments of a number of cases that had been transmitted in previous years. In addition, the Special Rapporteur sent 294 urgent appeals to 82 Governments on behalf of individuals with regard to whom serious fears had been expressed that they might be subjected to torture and other forms of ill-treatment. A total of 72 Governments provided the Special Rapporteur with replies to his communications.

Since the submission of the report to the Commission on Human Rights, the Special Rapporteur has continued to transmit communications to the Governments and to receive responses from them.

6. The Special Rapporteur is pleased to inform the General Assembly that he was given the opportunity to strengthen his cooperation with the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS). Thanks to the assistance provided by the Association for the Prevention of Torture (APT),[3] he attended a part of a session of the IACHR from 19 to 25 February 2003. Both members of the IACHR and the Special Rapporteur stressed the importance of taking consistent approaches to the fight against and the prevention of torture and ill-treatment and committed themselves to foster the collaboration between the two mechanisms through an exchange of information and common strategies. Possible joint actions were discussed. The Special Rapporteur notes that discussions on ways and means to enhance the collaboration between the United Nations and the Inter-American human rights systems had already been initiated by the respective secretariats. During this visit the Special Rapporteur also met with the Deputy Secretary General of the OAS, representatives of OAS member States and members of non-governmental organizations from the region. Particular attention was paid to the issue of the follow-up to recommendations related to his predecessor's fact-finding missions in that region.[3]

7. With a view to strengthening the collaboration among United Nations mechanisms dealing with the question of torture, on 15 May 2003, the Special Rapporteur met again with members of the Committee against Torture and with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture. At that occasion, issues of common interest were discussed, including the expected entry into force of the Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes a framework that will allow visits by independent international and national bodies to places where persons are deprived of liberty.

8. On 25 June 2003, the Special Rapporteur participated in a round-table discussion organized by the World Organization against Torture (OMCT),[4] the Swiss section of Action by Christians for the Abolition of Torture (ACAT),[5] the Association for the Prevention of Torture and Amnesty International,[6] on the prohibition of torture in the context of anti-terrorism measures.

9. On 26 June 2003, on the occasion of the United Nations International Day in Support of Victims of Torture, the Special Rapporteur, together with the Committee against Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Acting High Commissioner for Human Rights, issued a joint statement (see Annex I). On the same day, the Special Rapporteur participated in the launching of a handbook entitled "Combating torture: a manual for action" by Amnesty International. The handbook examines the prohibition of torture under international law, the safeguards to be granted to persons held in custody, the conditions of detention, the question of torture in other settings, and the problem of impunity. It also refers to standards and recommendations from United Nations and regional human rights bodies, as well as from other sources around the world, including Amnesty International's recommendations. Case studies highlight action undertaken to combat torture in various countries, and there are checklists of international standards and suggested further reading. The manual was produced as

part of Amnesty International's worldwide campaign against torture. The Special Rapporteur welcomes such an initiative and believes that this handbook is an invaluable tool for all those who want to understand and to be engaged in action against torture.

10. On 30 June 2003, the Special Rapporteur attended a Day of Discussion on HIV/AIDS and Human Rights, jointly organized by the OHCHR and the Joint United Nations Programme on HIV/AIDS (UNAIDS) in Geneva. The objective of this meeting, addressed to mandate-holders of special procedures of the Commission on Human Rights, was the development of a strategic approach for the integration of HIV/AIDS-related issues into their work. The Executive Director of UNAIDS and the Acting High Commissioner for Human Rights also participated in that meeting.

II. The prohibition of torture and other forms of ill-treatment in the context of anti-terrorism measures

11. In his report submitted to the previous session of the General Assembly, the Special Rapporteur examined inter alia the question of the prohibition of torture and other forms of ill-treatment in the context of anti-terrorism measures.[7] The Special Rapporteur would like to take this opportunity to further draw the attention of the General Assembly to a number of recent conclusions, recommendations and other findings on the matter issued by international and regional human rights monitoring bodies.

12. In accordance with Commission on Human Rights resolution 2003/68, entitled "Protection of human rights and fundamental freedoms while countering terrorism", which "*[e]ncourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies" (para. 6), the Special Rapporteur would like to call upon States to reflect upon the general recommendations included in his last report to the Commission (see E/CN.4/2003/68, para. 26) as well as the more specific ones included in his last report to the General Assembly (see A/57/173, paras. 2-35) as useful considerations and tools in efforts to combat torture and other forms of ill-treatment. He notes that similar recommendations are echoed in the documents referred to below and hopes that future policy documents will continue to impress upon States their need to respect their international human rights obligations, in particular the prohibition of torture and other cruel, inhuman or degrading treatment or punishment as an absolute and non-derogable right.

13. It should in particular be noted that the Special Rapporteurs/Representatives, Experts and Chairpersons of the working groups of the special procedures of the United Nations Commission on Human Rights adopted on 27 June 2003 a joint statement in which they expressed alarm at the growing threats against human rights, threats that necessitate a renewed resolve to defend and promote these rights. In this statement, they drew attention, inter alia, to "the dangers inherent in the indiscriminate use of the term 'terrorism', and the resulting new categories of discrimination" and they recalled that "in accordance with the International Covenant on Civil and Political Rights, and pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, certain

rights are non-derogable and that any measures of derogation from other rights guaranteed by the Covenant must be made in strict conformity with the provisions of its Article 4".[8]

International human rights treaty monitoring bodies

14. In the exercise of their monitoring activities, the Human Rights Committee and the Committee against Torture have recently addressed the issue of the respect of human rights provided for in international instruments in the context of existing or contemplated anti-terrorism legislation and other measures. While acknowledging the necessity to comply with security requirements, both Committees have reminded States Parties that the prohibition of torture is absolute and cannot be derogated from in any circumstances.[9]

15. In particular, the Special Rapporteur notes with interest that on several occasions, both Committees recalled the absolute nature of the principle of *non-refoulement* and that expulsion of those suspected of terrorism to other countries must be accompanied by an effective system to closely monitor their fate upon return, with a view to ensuring that they will be treated with respect for their human dignity. Furthermore, the Special Rapporteur would like to draw the attention of the General Assembly to the draft General Comment of the Human Rights Committee on Article 2 of the International Covenant on Civil and Political Rights on "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" which recalls that "(...) the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there is a real [and substantial] risk [i.e., a necessary and foreseeable consequence] [French: réel [et significatif]; S: real [y significativo]] of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters."[10]

16. In the same context, the Special Rapporteur also notes with interest the statement on racial discrimination and measures adopted to combat terrorism, adopted by the Committee on the Elimination of Racial Discrimination on 8 March 2002.[11] In this statement, the Committee demanded that States and international organizations ensure that measures taken in the struggle against terrorism not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin. Further, the Committee expressed its intention to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices in the framework of the fight against terrorism.

Organization of American States

17. In compliance with its resolution of 12 December 2001 and with resolution 1906 (XXXII-O/02) of the General Assembly of the Organization of the American States (OAS) of 4 June 2002, both entitled "Terrorism and Human Rights", and in conformity with article 18 of its Statute, the Inter-American Commission on Human Rights (IACHR) prepared a report with a view to assisting States in adopting anti-terrorist laws and regulations respectful of their international human rights

obligations.[12] With respect to the right to humane treatment,[13] the Special Rapporteur shares the Commission's view according to which "[t]he interrogation of individuals suspected of having committed terrorist activities is (...) strictly limited by both international human rights and humanitarian law standards relative to the right to humane treatment and the absolute prohibition of torture."[14]

18. The IACHR report further highlights that "(...) while each case must be evaluated on its own circumstances, torture or other cruel, inhuman or degrading treatment could include more subtle treatments that have nevertheless been considered sufficiently cruel, such as exposure to excessive light or noise, administration of drugs in detention or psychiatric institutions, prolonged denial of sleep, food, insufficient hygiene, or medical assistance, total isolation and sensory deprivation."[15] In accordance with international jurisprudence, the Commission also restates that acts constituting other cruel, inhuman or degrading punishment or treatment are strictly prohibited and that prolonged incommunicado detention may also constitute a form of cruel, inhuman or degrading punishment or treatment.[16]

19. In June 2002, the OAS General Assembly adopted the Inter-American Convention against Terrorism, which in article 15 explicitly refers to the respect for human rights. In particular, its paragraph 3 reads as follows: "Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law."

Council of Europe

20. The Special Rapporteur welcomes the guidelines elaborated by the Council of Europe's Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER), which were adopted by the Committee of Ministers on 15 July 2002.[17]

21. In particular, the Special Rapporteur wishes to draw attention to Guideline IV on the absolute prohibition of torture, which reads as follows: "The use of torture or of inhuman or degrading treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted." Guideline XV (possible derogations) reiterates the absolute prohibition of torture and inhuman or degrading treatment or punishment. Detailed recommendations on arrest and police custody, regular supervision of pre-trial detention and conditions of detention are also included.

22. Finally, Guideline XIII (extradition) provides that "[e]xtradition may not be granted when there is serious reason to believe that: (i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment". Further, the Special Rapporteur draws the attention to the adoption of the Protocol amending the European Convention on the Suppression of Terrorism by the Committee of Ministers on 7 November 2002, which was opened for signature on 15 May 2003. In particular, the text modifies the extradition refusal clause and introduces the non-obligation to extradite when the requested person is at risk of being exposed to torture.

III. Study on the situation of trade in and production of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment

23. In accordance with paragraph 13 of Commission on Human Rights resolution 2002/38, the Special Rapporteur presented a preliminary study on the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and to combat its proliferation to the fifty-ninth session of the Commission (see E/CN.4/2003/69).

24. In that report, the Special Rapporteur first drew the attention of the Commission to a number of references to such equipment in previous reports submitted by the Special Rapporteur. The legitimate use of some kinds of such equipment, in particular certain restraints (such as handcuffs) and kinetic and chemical devices, is recognized in a number of appropriate circumstances. It was noted that they may often constitute non-lethal alternatives to other security devices. It is nevertheless alleged that they have also been misused or intentionally used to inflict torture and other forms of ill-treatment. On the other hand, it is believed that other types of equipment are inherently cruel, inhuman or degrading and that their use would necessarily breach the prohibition of torture and other forms of ill-treatment.

25. The Special Rapporteur indicated that he did not intend to draw up a list of all equipments and instruments whose use is deemed to be inherently cruel, inhuman or degrading, as this would require more in-depth research. He did, however, express concern over the use of certain kinds of equipment regarding which the exact medical effects, including psychological ones, are reportedly still unknown. The absence of thorough, independent and impartial medical testing on short- and long-term effects poses a real problem in assessing whether a specific device is inherently cruel, inhuman or degrading. It was also noted that new equipment and technologies continue to be developed.

26. Regarding the trade in instruments specifically designed to inflict torture and other forms of ill-treatment, it was reported that this is a global trade involving countries of every region in the world. Information currently available regarding the companies involved is reportedly not comprehensive and is believed not to represent the true scale of the production and trade in such equipment, as very few Governments provide data in that respect. In particular, it was noted that a large number of countries do not require licences for the export, trans-shipment or brokerage of such products.

27. In his preliminary report, the Special Rapporteur noted a number of initiatives taken at the national and regional levels to prevent the trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. In particular, he noted the recent proposal by the Commission of the European Communities for a Council regulation concerning trade in certain equipment and products that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (see E/CN.4/2003/69, annex I). The Special Rapporteur welcomes such initiatives at regional and national levels. Nevertheless, only global measures would effectively prevent the trade in such equipment. It was also reported that the prohibition of the trade in such equipment is

often not effectively enforced owing to the absence of control mechanisms on military, security and police equipment and the absence of transparency. Trade controls are said to be evaded or legal loopholes exploited by companies that circumvent a ban on export by "brokering" such items while they are being sold by agents in third countries where such export is not regulated or prohibited. Official secrecy and a lack of accountability were said to benefit those who manufacture such items.

28. Finally, the Special Rapporteur also referred in his preliminary report to a set of recommendations made by Amnesty International. He stressed the importance of establishing monitoring mechanisms to control respect for trade and production regulations, be they national or international. The enactment of legal and other measures to stop the production and trade of equipment specifically designed to inflict torture and other forms of ill-treatment is part of the obligation of a general nature to prevent acts of torture (see article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). The Special Rapporteur reiterates that he would welcome further information from Governments and other interested parties on such initiatives with a view to proposing a set of best practices, and, eventually, a set of rules and regulations. He thus expects to be able to present a further report to the sixtieth session of the Commission.

IV. Reparation for victims of torture

29. As a follow-up to the views on the issue of reparation for torture victims presented by his predecessor in his report to the fifty-fifth session of the General Assembly (see A/55/290, paras. 24-33), the Special Rapporteur would like to draw the attention to an initiative of Redress Trust,[18] the *Audit Project: A Survey of the Law and Practice of Reparation for Torture in 30 Countries Worldwide*.[19] This project examines domestic law and practice on the right to reparation for torture victims with a view to establishing to what extent, if at all, torture victims have been able to exercise their right to reparation and, accordingly, States have implemented their obligations under international law. The collection and analysis of relevant law and practice is the result of a collaborative effort by human rights non-governmental organizations, legal and medical practitioners, academics and other interested persons, as well as relevant public authorities of the countries concerned.

30. The Special Rapporteur notes with concern that "[t]he overall findings [of this project] indicate that laws are inadequate and/or lacking in most of the countries under scrutiny and, even where present, rarely implemented. The absence of safeguards and the impunity afforded to perpetrators of torture contribute greatly to the prevalence of torture. Impunity is the result of a lack of political will and/or the failure to overcome severe institutional deficiencies to combat torture. The outcome is that torture remains unacknowledged, victims suffer in silence and there is little, if any, official support for survivors."[20]

31. The Special Rapporteur shares the views expressed in this report and previously expressed by his predecessor that the right to reparation for torture victims is clearly established in international law. Furthermore, he notes that renewed efforts are being made to underscore the need for reparational justice by means of a constructive review of the draft basic principles and guidelines on the right to a remedy and reparation for victims of violations of human rights and

humanitarian law. In this connection, the Special Rapporteur draws the attention to the report of the consultative meeting on draft basic principles and guidelines held on 30 September and 1 October 2002 (E/CN.4/2003/69) and to Commission on Human Rights resolution 2003/34, in which the Commission decided to continue its consideration of this question, as a matter of priority, at its sixtieth session.

32. As noted in the report released by Redress Trust, domestic courts are generally reluctant to use international law as a basis for their decisions in the absence of implementing legislation. Among other factors preventing victims from obtaining reparation, the report mentions the absence of a definition of the crime of torture in domestic legislation, the lack of criminal accountability of perpetrators, in particular owing to amnesty laws and other legal immunity legislation, and the lack of independence of investigatory bodies accessible by victims. It is also reported that most legislation does not encompass the notion of effective remedy. The Special Rapporteur would like to recall that adequate, effective and prompt reparation proportional to the gravity of the violation and the harm suffered[21] should include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[22]

33. Another factor identified in this report is the fact that in a number of countries, the burden of proof is placed on the defendant, thereby stacking the odds against torture victims and pre-empting proper investigation into allegation. This also provides an indirect encouragement for further torture. This is why the Special Rapporteur has constantly advocated that "[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment."[23] Time restrictions and the lack of standing for relatives of victims, as well as the lack of legislation expressly providing for the exercise of universal jurisdiction, are also identified as barriers of a legal nature against the implementation of an effective and enforceable right to reparation for victims of torture.

34. Perhaps more than other victims, torture survivors encounter the lack of political will on the part of public authorities to investigate and acknowledge torture practices inflicted by officials linked up with those same authorities and shielded by them from criminal responsibility. In addition, like other victims and persons who belong to the downtrodden and the destitute strata of national and international society, torture victims often lack access to justice and to effective recourse procedures; independent judicial and administrative agencies are unavailable and the authorities are simply incapable or unwilling to set up and maintain reparation schemes and programmes for the benefit of victims. In its report, Redress Trust makes a number of recommendations, from legal and institutional reforms to strengthening the awareness of the plight of torture victims. In particular, it calls for an improvement of the procedures for claiming reparation for torture by inter alia enabling victims to have a more active role in civil, criminal and administrative processes by streamlining procedures and removing bureaucratic impediments, as well as for the judiciary to develop a consistent jurisprudence on reparation.

35. As the Secretary-General stressed in his report entitled "Strengthening of the United Nations: an Agenda for Further Change",[24] human rights have to be supported first and foremost at the country level. Building strong human rights institutions at the domestic level and the emplacement or enhancement of national

protection systems, reflecting international norms, should be a principal objective. The audit project launched by Redress Trust responds to the need to enhance such national protection systems, of which reparational justice for torture victims is an essential ingredient, with the ultimate aim and perspective in mind of fully suppressing and preventing the crime of torture.

V. The prevention of torture and other forms of ill-treatment in psychiatric institutions

36. The Special Rapporteur has been receiving over the years reports regarding the treatment of individuals in psychiatric institutions of various types, including on the situation of persons who have been interned in psychiatric institutions on an involuntary basis pursuant to civil or criminal proceedings. According to the information received, some people held in psychiatric institutions are kept in overcrowded spaces and unhygienic conditions with lack of access to adequate food and drink and in inappropriate temperatures, fastened to benches, beds, or wheelchairs, given inappropriate medical care, if at all, or subjected to aversive procedures, such as subjection to electric shocks, prolonged restraint, slaps and beatings, deprivation of senses, isolation and other forms of ill-treatment.

37. In this context, in addition to the absolute nature of the prohibition of torture and the right of all persons deprived of their liberty to be treated with dignity, the Special Rapporteur would like to draw the attention of the General Assembly to a number of initiatives aimed at codifying the norms and principles that should apply to persons interned in psychiatric institutions. In its resolution 2856 (XXVI) of 20 December 1971, the General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons, and in its resolution 46/119 (1991) it also adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (hereinafter, the "MI Principles"). Both the Declaration in its Point 1 and the MI Principles in Principle 1, paragraph 5, stress that persons with mental illness have the same rights as any other human being. Furthermore, the MI Principles clarify that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[25] shall apply to such persons (Principle 1, paragraph 5).

38. The Special Rapporteur would also like to refer to the World Health Organization Guidelines for the Promotion of Human Rights of Persons with Mental Disorders[26] which elaborate inter alia on the fundamental freedoms and basic rights of mentally ill persons (principle 1), the determination of mental illness (principle 4), the medical examination (principle 5), the standards of care (principle 8), the treatment to be received (principle 9), the medication (principle 10), the consent to treatment (principle 11), the rights and conditions in mental health facilities (principle 13), admission principles (principle 15), involuntary admission (principle 16), review body (principle 17), procedural safeguards (principle 18), access to information (principle 19), and complaints (principle 21).

Legal safeguards related to the internment procedure

39. With regard to the legal safeguards in relation to the internment of individuals in psychiatric institutions and the review of such a measure, the Special Rapporteur has received disturbing information according to which persons have been denied

the legal safeguards provided for in articles 9 of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. In its General Comment on article 9 of the Covenant, the Human Rights Committee recalls that "Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness (...). [I]n particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States parties have in accordance with article 2 (3) also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant."[27]

40. In this context, the Special Rapporteur fully supports the view of the Human Rights Committee, which considers that a period of 14 days of detention for mental health reasons without any review by a court is incompatible with article 9 of the Covenant. State parties should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. Under article 9, paragraph 4, a person detained for mental health reasons is entitled to initiate proceedings in order to review the lawfulness of his/her detention.[28]

41. Principle 18 of the MI Principles also provides for a series of legal guarantees to be granted to those persons held in psychiatric institutions, in particular, the right to a counsel, to services of an interpreter, access to the patient's record and to a fair hearing. These safeguards shall be read in conjunction with Principle 16, paragraph 1, according to which involuntary admission cannot be conducted without the authorization of a qualified mental health practitioner authorized by law for that purpose. According to the second paragraph of this Principle, involuntary admissions or retention shall be promptly and accurately communicated to a review body, which in accordance with Principle 17 (1) shall be "a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account". Further, the review body shall issue a decision on the involuntary internment of a patient as soon as possible (principle 17, paragraph 2) and shall periodically review the cases of involuntary patients.

42. Finally, the Special Rapporteur notes with concern that he has also been receiving information on forced confinement of allegedly non-mentally ill persons in psychiatric establishments for other purposes than medical treatment. The respect for the legal safeguards referred to above is essential in cases in which such allegations are raised. In particular, the Special Rapporteur would like to remind States of Principle 4 of the MI Principles: "2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status." The Special Rapporteur believes that the internment of mentally sane individuals in a psychiatric institution may amount to a form of ill-treatment, or even, in certain circumstances, to torture.

43. In that respect, the Special Rapporteur would like to mention his report on the fact-finding visit referred to above, during which he visited a psychiatric institution. During his visit, a number of cases were reported of involuntary internments, allegedly as a form of punishment. In particular, the Special Rapporteur received information on two human rights defenders who had been interned in psychiatric institutions, allegedly as a repression against their activities and who were said to be subjected to forced medication.[29]

The treatment to be received by persons held in psychiatric institutions

44. Concerning the treatment to be received by patients in mental health facilities, the Special Rapporteur would like to recall that they are unconditionally protected by article 7 of the International Covenant on Civil and Political Rights. As the Human Rights Committee has pointed out: "[i]t is appropriate to emphasize in this regard that article 7 protects, in particular (...) patients in (...) medical institutions".[30]

45. The Special Rapporteur would further like to refer to article 10 of the International Covenant on Civil and Political Rights, which guarantees that all individuals deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[31] The protection from degrading treatment is also enshrined in Principle 8 of MI Principles, paragraph 2, which states that: "[e]very patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort". Further, point 6 of the Declaration on the Rights of Mentally Retarded Persons states: "[t]he mentally retarded person has a right to protection from exploitation, abuse and degrading treatment".

46. Accordingly, certain basic necessities shall be granted to all persons held in such institutions in a view to respecting their human dignity. In that context the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has developed detailed guidelines with respect to adequate food, heating and clothing as well as — in health establishments — appropriate medication.[32]

47. The Special Rapporteur would like to recall article 7 of the International Covenant on Civil and Political Rights, which clearly sets out that "no one shall be subjected without his free consent to medical or scientific experimentation" and article 8 which bans forced and compulsory labour. The Special Rapporteur would like to emphasize that certain practices such as irreversible treatments, including sterilization or psychosurgery, experimental treatment without informed consent or forced labour, which are expressly forbidden by the MI Principles,[33] shall be prohibited, as they may amount to a form of ill-treatment or even, in certain circumstances, to torture.

48. In response to the information received according to which non-mentally ill persons have been forcefully administered medication, the Special Rapporteur would like to refer to Principle 10 of the MI Principles, according to which "[m]edication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others (...)." In addition, according to the second part of the same principle, "[a]ll medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records".

The use of seclusion and other forms of restraint

49. The Special Rapporteur is equally concerned by the use of seclusion, i.e., the solitary confinement of the patient as a form of control or medical treatment. The Special Rapporteur notes that according to the information he has received, seclusion of patients is a method that tends to be avoided by modern psychiatric practice. However, this form of restraint is still being used in many psychiatric institutions. The Special Rapporteur would like to recall that seclusion should never be used as a punishment or without adequate safeguards. In this respect, he would like to draw the attention of the General Assembly to Principle 11, paragraph 11, of the MI Principles, which states that: "[p]hysical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and *only when it is the only means available to prevent immediate or imminent harm to the patient or others*. It shall not be prolonged beyond the period which is strictly necessary for this purpose. (...) A patient who is restrained or secluded shall be kept *under humane conditions* and be under *the care and close and regular supervision of qualified members of the staff*." (emphasis added)

50. More generally, the Special Rapporteur would like to recall that the Basic Principles for the Treatment of Prisoners adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, in particular its principle 7, reads as follows: "[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged".

51. While acknowledging that the restraint of violent or agitated inmates may be necessary in some circumstances, the Special Rapporteur would like to stress that this should always be conducted in accordance with the above-mentioned guiding principles. Furthermore, he notes the recommendation made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that "[t]he restraint of patients should be the subject of a clearly-defined policy. That policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control."[34]

Monitoring of psychiatric institutions

52. The Special Rapporteur believes that regular monitoring of psychiatric institutions through in situ visits by independent bodies greatly contributes to guaranteeing that the living conditions and the treatment received in such establishments comply with international standards. With regard to the nature and functions of the review bodies, the Special Rapporteur wishes to refer to Principle 17 of the MI Principles.[35]

53. As far as international monitoring bodies are concerned, the Special Rapporteur notes that at the regional level the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment conducts regular visits to psychiatric institutions. Accordingly, it has closely examined the situation of individuals in psychiatric institutions and, in accordance with its findings, has drawn up a series of standards in that connection,[36] including with respect to involuntary placement in psychiatric institutions. The Special Rapporteur welcomes initiatives such as the creation of inspection systems for psychiatric

institutions similar to that of the CPT provided for by Recommendation 1235(1994) of the Council of Ministers of the Council of Europe.[37] It is the Special Rapporteur's opinion that, once it starts operating, the Sub-Committee to be created under the Optional Protocol to the Convention against Torture will also contribute to foster monitoring of that type of institution.

Notes

[1] E/CN.4/2003/68/Add.1.

[2] The APT is an independent non-governmental organization with consultative status with the Economic and Social Council of the United Nations working worldwide against torture and ill-treatment by focusing on the prevention of such abuses.

[3] Colombia (E/CN.4/1995/111), Chile (E/CN.4/1996/35/Add.2), Venezuela (E/CN.4/1997/7/Add.3), Mexico (E/CN.4/1998/38/Add.2) and Brazil (E/CN.4/2001/66/Add.2).

[4] The OMCT is an international coalition of NGOs fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman and degrading treatment.

[5] ACAT is a non-governmental organization which campaigns on behalf of people who are tortured, detained in inhuman conditions, sentenced to death or "disappeared".

[6] Amnesty International is a worldwide non-governmental organization which campaigns for internationally recognized human rights. Its handbook "Combating torture: a manual for action" is available at: http://web.amnesty.org/pages/stoptorture-manual-index-eng (last checked on 27 June 2003).

[7] See A/57/173, paras. 2-35.

[8] United Nations Press Release, 30 June 2003, available at http://www.unhchr.ch/huricane/huricane.nsf/view01/F1A1ADCDFDCA24DEC1256D550031E966?opendocument (last check on 30 June 2003). See Annex II.

[9] See inter alia CCPR/CO/77/EST (Estonia), para. 8; CCPR/CO/76/EGY (Egypt), para. 16; CCPR/CO/75/YEM (Yemen), para. 18; CCPR/CO/75/NZL (New Zealand), para. 11; CCPR/75/MDA (Moldova), para. 8; CCPR/CO/74/SWE (Sweden), para. 12; CCPR/CO/73/UK (United Kingdom), para. 6; CAT/C/XXIX/Misc.4 (Egypt), para. 4; CAT/C/CR/28/6 (Sweden), para. 6 (b).

[10] CCPR/C/74/CRP.4/Rev.2, para. 11.

[11] Committee on the Elimination of Racial Discrimination, Report to the 57th Session of the General Assembly, A/57/18, page 106.

[12] Report on Terrorism and Human Rights, OAS Doc. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. The report is available online at the following web-site address: www.cidh.oas.org/Terrorism/Eng/toc.htm (17 June 2003).

[13] See Article 5, American Convention on Human Rights.

[14] See IACHR Report on Terrorism and Human Rights, section III C entitled "Right to Human Treatment and Terrorism", para. 210.

[15] Ibid., para. 212.

[16] Ibid., para. 213.

[17] The Special Rapporteur takes note that in its resolution 57/156 entitled "Cooperation between the United Nations and the Council of Europe" adopted without a vote on 16 December 2002, the United Nations General Assembly inter alia commended "the Council of Europe for its contribution to the implementation of Security Council resolution 1373 (2001) of 28 September 2001 and takes note in this context of the Council of Europe's Guidelines on Human Rights and

the Fight against Terrorism, adopted by its Committee of Ministers on 11 July 2002 and referred to in the addendum to the report of the Secretary-General on measures to eliminate international terrorism".

[18] REDRESS is an internationally focused non-profit human rights/legal organization based in London, founded on Human Rights Day, 10 December 1992. REDRESS helps torture survivors obtain justice and reparation. Reparation (including rehabilitation and compensation) plays an important part in the rebuilding of the lives of those who have suffered torture.

[19] The report is available online at the following web-site address: www.redress.org/AuditProjectReport.html (17 June 2003). The following countries have been identified in that study: Argentina, Bahrain, Brazil, Chile, China, Egypt, the Federal Republic of Yugoslavia, India, Indonesia, Iran, Israel, Japan, Kenya, Lebanon, Mexico, Morocco, Nepal, Nigeria, Peru, Philippines, Romania, the Russian Federation, Rwanda, South Africa, Sri Lanka, the Sudan, Switzerland, Turkey, United Kingdom, Uzbekistan, Zimbabwe. The countries were selected on the basis of the following criteria: geographical representation, representation of legal systems and the need for, and prospect of, law reform.

[20] See the section entitled "Overall Findings of the Audit Project".

[21] Basic principles and guidelines on the right to a remedy and reparation for victims of violation of international law and humanitarian law, Annex to the final report of the independent expert of the Commission on Human Rights on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Cherif Bassiouni (E/CN.4/2000/62), para. 15.

[22] Ibid., para. 21.

[23] Recommendation (k), E/CN.4/2003/68, para. 26.

[24] A/57/387, paras. 55 et seq.

[25] Adopted by General Assembly resolution 43/173 of 9 December 1988.

[26] Guidelines for the Promotion of Human Rights of Persons with Mental Disorders, Division of mental health and prevention of substance abuse, WHO, Geneva, WHO/MNH/MND/95.4.

[27] Human Rights Committee, General Comment no. 8 on Article 9, adopted in 1982, paragraph 1. Included in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.5, 26 April 2001.

[28] See Concluding Observations of the Human Rights Committee: Estonia, 3 April 2003, CCPR/CO/77/EST, para. 10.

[29] E/CN.4/2003/68/Add.2, annex, pp. 57-58.

[30] Human Rights Committee, General Comment No. 20 on Article 7, adopted in 1992, paragraph 5. Included in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.5, 26 April 2001.

[31] In its General Comment No. 21 on Article 10, the Human Rights Committee makes it clear that this provision applies "to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals — particularly psychiatric hospitals" (para. 2).

[32] See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "The CPT Standards", CPT/inf (2003) available at the following web-site address: www.cpt.coe.int/en/docsstandards.htm.

[33] Principle 11, in particular, paragraphs 12, 14 and 15.

[34] CPT/inf (2003), Chapter VI, Involuntary placement in psychiatric establishments, para. 47, available at the following web-site address: www.cpt.coe.int/en/docsstandards.htm.

[35] Principle 17 "Review body. 1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid

down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account. 2. The review body's initial review, as required by paragraph 2 of Principle 16, of a decision to admit or retain a person as an involuntary patient shall take place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law. 3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law. 4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law. 5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of Principle 16 are still satisfied, and, if not, the patient shall be discharged as an involuntary patient. 6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient. 7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

[36] CPT/inf (2003).

[37] The terms of reference of the Working Party on Psychiatry and Human Rights (CDBI-PH) read as follows: "Under the authority of the Steering Committee on Bioethics (CDBI) and in the light of Committee of Ministers' Recommendation No. R (83)2 on legal protection of persons suffering from mental disorder placed as involuntary patients and of Parliamentary Assembly Recommendation 1235 (1994) on psychiatry and human rights, to draw up guidelines to be included in a new legal instrument of the Council of Europe. These guidelines should aim to ensure protection of the human rights and dignity of people suffering from mental disorder, especially those placed as involuntary patients, including their right to appropriate treatment." http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Bioethics/Activities/Psychiatry_and_human_rights/01TermsofRef_CDBI-PH.asp

Annex I

Joint statement, 26 June 2003

The United Nations Committee against Torture, the Special Rapporteur of the Commission on Human Rights on the question of torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations Deputy High Commissioner for Human Rights and Officer in charge of the Office of the High Commissioner for Human Rights make the following statement on the occasion of the United Nations International Day in Support of Victims of Torture.

In an international environment deeply affected by conflict and violence, we feel it is essential to reiterate that it is the obligation of States to prevent, prohibit, investigate and punish all acts of torture and other forms of ill-treatment. Freedom from torture and other cruel, inhuman or degrading treatment is an absolute right which cannot be derogated from under any circumstances, including in times of armed conflict and other situations of public emergency. We also take this opportunity to highlight the absolute character of the principle of non-refoulement, which provides that no one shall be deported to a State where he or she would be in danger of being subjected to torture.

We welcome the adoption by the United Nations General Assembly of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, which allows for visits by independent experts to places where people are detained or otherwise deprived of their liberty, as an important tool for preventing torture, and we encourage States to ratify this new instrument and to set up national mechanisms allowing such visits to take place.

We recall that States' obligations with regard to the prohibition of torture also include the duty to provide adequate, effective and prompt reparation to torture victims, including facilities for their rehabilitation. We therefore continue to support those States, organizations and other organs of civil society that are committed to eradicating torture and securing redress for all torture victims.

On this International Day in Support of Victims of Torture, we call upon Governments, non-governmental organizations, private and public entities and individuals to express their solidarity with victims of torture and members of their families by contributing generously to the United Nations Voluntary Fund for Victims of Torture, so that the Fund can increase its financial assistance to about 200 projects run by non-governmental organizations all over the world to provide psychological, medical, social, economic, legal and other forms of humanitarian assistance to about 100,000 victims of torture and members of their families.

Annex II

Joint statement by the Special Rapporteurs/Representatives, Experts and Chairpersons of the working groups of the special procedures of the United Nations Commission on Human Rights, 30 June 2003

The special rapporteurs/representatives, experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights, who met in Geneva from 23 to 27 June 2003, expressed alarm at the growing threats against human rights, threats that necessitate a renewed resolve to defend and promote these rights. They also noted the impact of this environment on the effectiveness and independence of special procedures.

Although they share in the unequivocal condemnation of terrorism, they voiced profound concern at the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights — civil, cultural, economic, political and social.

They draw attention to the dangers inherent in the indiscriminate use of the term "terrorism", and the resulting new categories of discrimination. They recall that, in accordance with the International Covenant on Civil and Political Rights, and pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, certain rights are non-derogable and that any measures of derogation from the other rights guaranteed by the Covenant must be made in strict conformity with the provisions of its article 4.

The special rapporteurs/representatives, experts and chairpersons of the working groups of the special procedures of the Commission and the chairpersons of human rights treaty bodies deplore the fact that, under the pretext of combating terrorism, human rights defenders are threatened and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies.

They strongly affirm that any measures taken by States to combat terrorism must be in accordance with their obligations under the international human rights instruments.

They are determined, in the framework of their respective mandates, to monitor and investigate developments in this area and call upon all those committed to respect for human rights, including the United Nations, to be vigilant to prevent any abuse of counter-terrorism measures.